

SERVICE DATE – FEBRUARY 8, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34818

CITY OF JERSEY CITY, RAILS TO TRAILS CONSERVANCY,
PENNSYLVANIA RAILROAD HARSIMUS STEM EMBANKMENT
PRESERVATION COALITION,
AND NEW JERSEY STATE ASSEMBLYMAN LOUIS M. MANZO–
PETITION FOR DECLARATORY ORDER

Decided: February 7, 2006

On January 12, 2006, the City of Jersey City, NJ (City), the Rails to Trails Conservancy, the Pennsylvania Railroad Harsimus Stem Embankment Coalition, and State Assemblyman Louis M. Manzo (collectively, petitioners) filed a petition for declaratory order under 5 U.S.C. 554(e). The petition asks that the Board determine whether Consolidated Rail Corporation (Conrail) needs prior agency authorization to abandon the Harsimus Branch and the Sixth Street Embankment (Embankment), extending between milepost 1.3 near Luis Munoz Marin Boulevard and milepost 2.54 near Waldo Avenue, in Jersey City, NJ. The petition indicates that the line had been an active rail line, but that the Embankment had recently been sold by Conrail to several entities collectively known as SLH Properties (SLH)¹ for development as residential housing.²

In separate replies filed on February 1, 2006, Conrail and SLH assert that the line was not an active rail line when it was acquired by Conrail in 1976 pursuant to the United States Railway Association's Final System Plan but was operated by Conrail as yard or spur track. They indicate further that Conrail had abandoned adjoining portions of the line without seeking

¹ 212 Marin Boulevard, L.L.C.; 247 Manila Avenue, L.L.C.; 280 Erie Street, L.L.C.; 317 Jersey Avenue, L.L.C.; 354 Coles Street, L.L.C.; 389 Monmouth Street, L.L.C.; 415 Brunswick Street, L.L.C.; and 446 Newark Avenue, L.L.C.

² The petition is supported by United States Senators Robert Menendez and Frank R. Lautenberg, and United States Representatives Frank Pallone, Steven R. Rothman, Robert E. Andrews, Donald M. Payne and Bill Pascrell, Jr. Letters supporting the petition were also received from the County of Hudson Department of Public Resources, Hamilton Park Neighborhood Association, Preservation New Jersey, East Coast Greenway Alliance, NY/NJ Baykeeper, Harsimus Cove Association, Metropolitan Waterfront Alliance, Historic Paulus Hook Association, Inc., the Jersey City Landmarks Conservancy, Inc., and Bernard F. Kenny, Jr., Senate Majority Leader, State of New Jersey.

abandonment approval from the Interstate Commerce Commission or the Board and had sold the property for redevelopment with strong encouragement from the City. They also note that Conrail had already removed tracks, ties and bridges on the line at the City's urging. Neither Conrail nor SLH opposes petitioners' request that the Board institute a declaratory order proceeding. Both emphasize that, during the pendency of the proceeding, SLH will not demolish or remove any pier or other structure on the property, and both recommend a procedural schedule for the proceeding.

The Board has discretionary authority under 5 U.S.C. 554(e) to issue a declaratory order to terminate a controversy or remove uncertainty. In this case, there is a controversy regarding the status of the above-described line. Therefore, under the Board's authority at 5 U.S.C. 554(e) and 49 U.S.C. 721, a proceeding will be instituted. The parties are directed to provide information that will enable the Board to determine whether the subject line is an active rail line that remains subject to the Board's abandonment authority.

The Board will resolve this matter pursuant to the modified procedure rules at 49 CFR part 1112. Petitioners have requested expedited consideration, asserting that SLH has begun salvaging the line. However, in their responses, Conrail and SLH state that expedited consideration is not necessary, because SLH has agreed that it will not demolish or remove any piers or other structures on the property while this proceeding is pending. The procedural schedule proposed by Conrail and SLH should result in a timely resolution of this matter and will be adopted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A declaratory order proceeding is instituted. The proceeding will be handled under the modified procedure on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice, including 49 CFR parts 1112 and 1114.

2. Petitioners' opening statement is due by March 10, 2006. Replies are due by April 24, 2006. Petitioners' rebuttal is due by May 9, 2006.

3. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary